motely connected with the accident, the proximate cause of which was the inability of the engineer to stop because of the violation of the speed ordinance.

TRUSTS—PAROL TRUSTS IN REAL ESTATE—STATUTE OF FRAUDS.—All the members of a family including the plaintiffs and defendant, intended that title to a burial lot should be taken in the name of the father, but by mistake the deed was taken in the name of the defendant. The father died without knowledge of the mistake. After his death the defendant orally agreed to hold the lot for the benefit of the plaintiffs. Later defendant claimed an absolute and unconditional title and plaintiffs thereupon brought suit to establish a trust in the lot. *Held,* under Rev. Laws, c. 147, § 1, providing that no trust in land shall be created, unless by an instrument in writing, equity could not enforce the trust against the defendant. *Tourtillotte et al.* v. *Tourtillotte et al.* (1910), — Mass. —, 91 N. E. 909.

In most of the states the English statute of frauds, providing that all declarations or creations of trusts in lands, except those implied by law, shall be manifested and proved by some writing signed by the party declaring the trust, has been re-enacted in its original or in a slightly modified form. 28 AM. & ENG. ENCY. Law, Ed. 2, 874. Under such a statute an oral promise by a grantee to hold the land in trust is unenforcible. *Pollard* v. *McKenney,* 69 Neb. 742; 101 N. W. 9; *Thompson* v. *Marley,* 102 Mich. 476, 60 N. W. 976; *Heddleston* v. *Stoner,* 128 Ia. 525, 105 N. W. 56; *Thomas Adm'r.* v. *Merry,* 113 Ind. 83, 15 N. E. 244. If, however, a person, through mistake, obtains the legal title and apparent ownership to property which in justice and good conscience belongs to another, such property is impressed with a trust in favor of the equitable owner. *Cole* v. *Fickett,* 95 Me. 265, 49 Atl. 1060; *Lamb* v. *Schiefner,* 129 App. Div. 684; 114 N. Y. Supp. 34; *Andrews* v. *Andrews,* 12 Ind. 348; *Harris* v. *Stone,* 8 Ia. 322. *Smith* v. *Walser,* 49 Mo. 250. Furthermore equity will raise a constructive trust to defeat fraud. *Rollins* v. *Mitchell,* 52 Minn. 41, 53 N. W. 1020; *Ryan* v. *Dox,* 34 N. Y. 307, 90 Am. Dec. 696; *Moore* v. *Crawford,* 130 U. S. 122. The principal case does not seem to be in accord with the weight of authority, unless the court was confined to the question whether or not the oral declarations, apart from the other circumstances in the case, were sufficient to create an enforcible trust.

WILLS—NATURE OF ESTATE—RULE IN SHELLEY'S CASE—"ISSUE."—A devise was made in the following language: "I give and devise unto my son Jacob E. Kemp the use and income for and during his lifetime of * * * (describing certain real property) and immediately after the decease of said Jacob E. Kemp, I give and devise * * * the land devised to him herein for life, to his issue in fee." Then followed a devise over in case of his death without issue. The rule in *Shelley's* case was in force. *Held,* the rule in *Shelley's* case does not apply here, since it was the intention of the testatrix to limit the estate of the first taker to one for life, and his issue do not take as heirs but are intended themselves to become the root of a new succes-